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FOR THE CLERK OF COURT  
MULTNOMAH COUNTY

IN THE CIRCUIT COURT OF THE STATE OF OREGON  
IN AND FOR THE COUNTY OF MULTNOMAH

MICHELLE MARTIN, MICHELLE  
HOCHSTETLER, and ROBIN CAHILL  
individually and on behalf of all other similarly  
situated persons,

Plaintiffs,

vs.

COMCAST OF CALIFORNIA/ COLORADO/  
FLORDIA/ OREGON, INC., a foreign corporation,  
et al

Defendants.

Case No. 0407-07245

**ORDER GRANTING IN PART AND  
DENYING IN PART PLAINTIFFS'  
MOTION TO CERTIFY CLASS  
ACTION AND DENYING  
DEFENDANTS' MOTION TO  
CERTIFY FOR INTERLOCUTORY  
APPEAL PURSUANT TO ORS  
19.225**

On August 29, 2008, and on December 12, 2008, plaintiffs appeared through their attorneys, David F. Sugerman and Tim A. Quenelle, and defendants appeared through their attorneys, Jaime A Bianchi, Duane A. Bosworth, and Sheldon Philp on Plaintiffs' Motion to Certify Class Action. On February 27, 2009, plaintiffs appeared through their attorneys, David F. Sugerman and Tim A. Quenelle, and defendants appeared through their attorneys, Duane A. Bosworth, and Kevin H. Kono, on Defendants' Motion to Certify for Interlocutory Appeal Pursuant to ORS 19.225. The Court reviewed all of the briefs of the parties and heard multiple rounds of oral argument.

1 The Court issued a letter opinion on December 17, 2008 setting forth its rulings on the  
2 class certification motion, and the Court announced its ruling in open court on February 27 that  
3 clarified its class certification ruling and disposed of the interlocutory appeal certification  
4 motion.

5 As to the class certification motion, the Court makes the following findings pursuant to  
6 ORCP 32C1:

7 1. The class is so numerous that joinder of all members is impracticable.  
8 2. There are questions of law or fact common to the class.  
9 3. The claims of plaintiffs Michelle Hochstetler and Robin Cahill are typical of the claims  
10 of the class.

11 4. Michelle Hochstetler and Robin Cahill are adequate class representatives.

12 5. The claims of Michelle Martin are not typical, and she is not an adequate class  
13 representative because she does not and did not reside in Oregon.

14 6. The plaintiffs complied with the notice requirements set forth in ORCP 32A(5).

15 7. The class to be certified is for a claim under the Unlawful Trade Practices Act.

16 Plaintiffs allege that defendants violated the Unlawful Trade Practices Act by billing and  
17 assessing cable television late fees without first complying with the disclosure requirements set  
18 forth in ORS 646.649. The Court finds that sellers of cable television services are prohibited  
19 from assessing late fees on delinquent accounts unless the seller meets the requirements of ORS  
20 646.649(2), (3), and (4), the statute that regulates assessment of cable TV late fees. The Court  
21 concludes that Comcast was not required to notify members of the class of its internal \$20 dollar  
22 late-fee threshold or the statutory \$10 unpaid balance late-fee threshold before assessing late  
23 fees. However, Comcast was required to comply with the provisions of ORS 646.649 that set out  
24 the content of the notice and the timing of late fee assessments.

1 8. The facts of Comcast's conduct in assessing, billing and collecting late fees are  
2 common factual questions. The interpretation of ORS 646.649 and the interpretation of the  
3 Unlawful Trade Practices Act, ORS 646.605 *et seq.* create a series of common legal questions.  
4 As well, the defenses asserted against members of the class relating to voluntary payment, set-  
5 off/recoupment, and unclean hands present common questions of fact and law.

6 9. A class action for the class defined by this Order is superior to other available methods  
7 for the fair and efficient adjudication of the controversy, as plaintiffs seek injunctive relief, the  
8 request for injunctive relief creates the risk of inconsistent or varying adjudications that would  
9 establish incompatible standards of conduct, and common questions of fact or law predominate  
10 over individual questions.

11 10. The class is defined as all current and former Oregon residents who: 1) are or were  
12 Comcast cable television subscribers in Oregon after July 14, 2003, and 2) who, during the class  
13 period, paid a late fee responsive to a billing from Comcast that did not comply with the  
14 provisions of ORS 646.649.

15 As to the interlocutory appeal certification, the Court makes the following findings  
16 pursuant to ORS 19.225:

17 1. As set forth in *Pearson v. Philip Morris*, 208 Or App 501 (2006), this matter does not  
18 constitute an exception case that merits interlocutory review.

19 2. Based upon the present posture of the case and the likely future proceedings,  
20 immediate appeal is unlikely to materially advance the ultimate termination of the litigation.

21 Based on the foregoing, IT IS NOW ORDERED that:

22 1. Plaintiffs' Motion to Certify the Unlawful Trade Practice Act claim as a class action is  
23 granted for the reasons set forth in the Court's opinion letter of December 17, 2008;

24 2. Plaintiffs' Motion to Certify the Unlawful Debt Collection Practice Act claim as a  
25 class action is denied for the reasons set forth in the Court's opinion letter of December 17, 2008;


1 3. Plaintiffs' Motion to Certify the Unjust Enrichment claim as a class action is denied for  
2 the reasons set forth in the Court's opinion letter of December 17, 2008;

3 4. David F. Sugerman and Tim A. Quenelle are appointed to serve as class counsel; and

4 5. The parties shall confer on a proposed notice plan and a proposed discovery schedule  
5 and, within 30 days of this Order, provide a proposed notice plan and a proposed discovery plan  
6 to the Court. If the parties cannot agree on a joint notice plan or discovery plan, each side shall  
7 file its proposed notice plan and proposed discovery plan within 30 days of this Order.

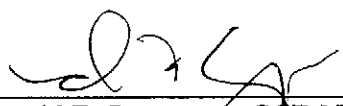
8 6. Defendants' Motion to Certify for Interlocutory Appeal is denied.

9 DATED this 17<sup>th</sup> day of March, 2009.

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12 \_\_\_\_\_  
13 Hon. Richard C. Baldwin  
14 Circuit Court Judge

13 Submitted this 16<sup>th</sup> day of March, 2009 by:

14 PAUL & SUGERMAN, PC

15   
16 \_\_\_\_\_  
17 David F. Sugerman, OSB No. 86298  
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25

**CERTIFICATE OF SERVICE**

I hereby certify that I served the foregoing **ORDER GRANTING IN PART AND DENYING IN PART PLAINTIFFS' MOTION TO CERTIFY CLASS ACTION AND DENYING DEFENDANTS' MOTION TO CERTIFY FOR INTERLOCUTORY APPEAL PURSUANT TO ORS 19.225** on the following persons on this same day:

by enclosing a copy in an envelope, properly addressed and with first-class postage, and placing in the mail in Portland, Oregon

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DATED this 16<sup>th</sup> day of March, 2009.

By: 

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